

**UNIVERSITY OF SWAZILAND**

**FACULTY OF SOCIAL SCIENCE**

**DEPARTMENT OF LAW**

**FINAL EXAMINATION**

**MAY 2010**

**TITLE OF PAPER: ADMINISTRATIVE LAW**

**COURSE CODE: L205**

**TIME ALLOWED: THREE (3) HOURS**

**INSTRUCTIONS:**

- (a) ANSWER ANY FOUR (4) QUESTIONS.**
- (b) EACH QUESTION CARRIES A TOTAL MARK OF 25.**
- (c) THE CONTENT OF YOUR ANSWERS, CLARITY OF EXPRESSION AND LEGIBILITY OF YOUR HANDWRITING ARE ALL EXTREMELY ESSENTIAL.**

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**Question one:**

The old English remedy of *certiorari* did not survive the transition and incorporation into our legal system. As a result, it does not form the basis part of the remedial avenues available under our administrative law. Discuss the veracity or otherwise of this statement.

**(25 Marks)**

**Question two:**

- (a) The doctrine of *ultra vires* is the central principle of administrative law. Born in the era of Parliamentary sovereignty, this doctrine has been the subject of severe criticism by both legal scholars and judges alike. Today it has been overtaken by the constitutionality test. Critically discuss (15)
- (b) The term public power is an elusive one. However, the courts have attempted to proffer a working definition. With case illustrations, define this term.

**(25 Marks)**

**Question three:**

Nigu Village is a rural community in the south of Swaziland. In early 2009 strangely dressed people started appearing in the village, with scoping machines and other electronic tools. They were moving from place to place, taking measurements, water temperature readings, air quality readings and marking certain routes in the otherwise undisturbed terrain. This attracted the attention of the village children who would follow these people around. The village children were coming up with different reports on who these strange people were or what exactly they were looking for. Ndosi, a young University law student and also a member of the community police decided to report this to the traditional chief, who dismissed his complaint as fanciful. Ndosi and his community police team decided to conduct their own investigations. They uncovered that the strange people had been hired by Chancery House, a company in which the state had a 50 per cent stake, to scope the land for coal and oil deposits. Further, excavations had begun on the southernmost tip of the local river, as well as in the forest north of the village, which forest is used for hunting by the villagers. Ndosi was taken aback because the community had not been consulted on this move, which was highly likely to destroy both agricultural land and the natural environment, awash with diverse species of flora and fauna. Ndosi began mobilizing the community to demand that the laws of the land be followed, but was quickly labeled as a rebellious youth who was only planting seeds of doubt in the minds of the community. The local Member of Parliament (MP) warned the community not to follow Ndosi's lead as this would result in loss of jobs that he had secured for the community in his capacity as MP. The MP went on to state that Ndosi's attempts were futile because the environmental authority had already issued them with the go-ahead on this project. Advise Ndosi on remedies available.

**(25 Marks)**

**Question four:**

(a) The task of law-making is traditionally reserved for parliament. Due to pressures on parliamentary time, the making of several legislative instruments is sometimes delegated to other bodies. What are the control measures in place to prevent the authority to whom such powers have been delegated from exceeding those powers? (20)

(b) What purpose does subordinate legislation serve. (5)

**(25 Marks)**

**Question five:**

In *Various Occupants v Thubelisha Homes and Others* CCT 22/08; [2008] ZACC the applicants averred that the respondents reneged on their undertaking to provide at least 70% of the 'new' accommodation to the members of Joe Slovo Settlement. They asserted that the respondents now sought to make the bulk of said accommodation available to other persons. It was submitted on behalf of the applicants that they had a legitimate expectation, based on undertakings made to them, that they would benefit from at least 70% of the said units. Critically analyze this case in light of the doctrine of legitimate expectation.

**(25 Marks)**